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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,652	01/07/2004	Barry G. Anderson	015005-9450-00	4091

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MICHAEL BEST & FRIEDRICH LLP
100 E WISCONSIN AVENUE
Suite 3300
MILWAUKEE, WI 53202

EXAMINER

ANDERSON, CATHARINE L

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

07/20/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/752,652

Applicant(s)

ANDERSON ET AL.

Examiner

Lynne Anderson

Art Unit

3761

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-16 and 19-21 is/are allowed.
- 6) ☒ Claim(s) 17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7 May 2009 has been entered.

Response to Arguments

2. Applicant's arguments filed 7 May 2009 have been fully considered but they are not persuasive.
3. With respect to claims 17 and 18, the ranges of motion described by the limitations "a swingarm pivotably coupled to the housing," and "rotating the swingarm" are not clearly defined, and therefore when considered under the broadest reasonable interpretation of the claims, the movement of the swingarm of Bemis fulfills the claimed limitations.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bemis et al. (5,931,822).

6. Bemis discloses a medical device for draining a suction canister 10, as shown in figure 1, having a cover 22 and a liner 14. A housing 400 has a swingarm 484 coupled thereto, the swingarm being movable between a first, or upper, position, and a second, or lower, position, as shown in figure 16. A support member 464 is in contact with the swingarm 484 when the swingarm 484 is in the second position, and the support member 464 moves between a first position and a second position, as shown in figure 16. A drainhead 492 has a passageway therein, and is movable between a first position and a second position, as shown in figure 16, the second position allowing access to the canister. A suction source drains fluid from the canister through the drainhead, as disclosed in column 1, lines 59-62. The device is drained by the method of placing the canister 10 in contact with, or on, the swingarm 484, which results in coupling of the drainhead 492 with the canister 10, and activating the suction source.

Allowable Subject Matter

7. Claims 1-16 and 19-21 are allowed.
8. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record, specifically the closest prior art of record, U.S. Patent 5,931,822, to Bemis, fails to disclose the present invention.
9. With respect to claims 1-13 and 19, Bemis fails to disclose a swingarm that is adapted to move the suction canister between a first position and a second position. The suction canister of Bemis remains stationary while the swingarm moves between a first upper position and a second lower position, as shown in figure 16. Since the canister is held by the housing, and not by the swingarm, the movement of the

swingarm does not also move the canister. Therefore, Bemis fails to disclose or fairly suggest the claimed invention.

10. With respect to claims 14-16 and 20-21, Bemis fails to disclose a drainhead that is pivotable with respect to the swingarm, or that is capable of being moved while the swingarm remains stationary. The drainhead 492 of Bemis is coupled to the swingarm 484, as shown in figure 16, and unable to move independently from the swingarm. Since the swingarm of Bemis is designed to be raised or lowered in order to place the drainhead into the canister, allowing for separate movement of the drainhead while the swingarm remains stationary is not anticipated by Bemis. Therefore, Bemis fails to disclose or fairly suggest the claimed invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. A./
Examiner, Art Unit 3761

/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761